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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, APPELLANT,
v.
MARGARITO BACA.
} No. 170.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

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STATEMENT.

On February 23, 1893, the plaintiff filed his petition in the Court of Private Land Claims against the United States for the confirmation of the Baltazar Baca or San Jose del Encinal grant, situate in New Mexico, alleging that the tract had been granted to his ancestors, Baltazar Baca and his two sons, about the year 1768 or 1769, by Pedro Fermin de Mendinueta, the then governor and captain-general of New Mexico, setting forth verbatim the muniments of title upon which he relies, and a translation of the same. (R., 3–9.)

He alleges that there are no persons in possession of any portion of the tract claimed, with the exception of some few Indians of the pueblo of Laguna, whose

names are unknown to the petitioner; that the tract contains something between 15,000 and 30,000 acres; that the same was petitioned for to the surveyor-general of New Mexico under the act of July 22, 1854, proceedings had, and the grant by him recommended to Congress for confirmation (R., 2); that the petitioner has been for forty-five years last past residing upon the tract, together with other of the descendants of the original grantee. (R., 9.) With other allegations, not now material, the petition closes with an elaborate prayer for relief, the effect of which is that the grant may be inquired into by the court and confirmed to him. (R., 10.)

The United States filed an answer (R., 12, 13) after the trial by consent of the court (R., 42, 43), which was subsequently superseded with consent of the court (R., 66) by an amended answer (R., 67, 68) which presents clearly the contentions advanced by the United States why the court should dismiss the petition, to wit:

That the tract of land claimed lies wholly within the lands confirmed by Congress to the town of Cebolleta and the pueblo of Laguna by the acts of June 21, 1860, and March 3, 1869, respectively, pursuant to which patents of the United States were duly issued by the proper authorities to the said claimants (R., 67, 68); that by reason thereof the premises claimed are lands the right to which had theretofore been lawfully acted upon and decided by Congress, and that the court had no jurisdiction to confirm to the claimants the tract claimed or any part thereof. It was the contention of

the United States that this condition of affairs (sustained by the evidence [R., 45–61] and admitted by the court in its decree [R., 70, paragraph 6]) brought the case within the prohibition expressed in subsection 4 of section 13 of the act of March 3, 1891, as follows (26 Stat. L., p. 854):

> No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority.

The holders of the confirmed grants to the town of Cebolleta and the pueblo of Laguna entered their appearance in the case. (R., 62–64.)

A trial was had at which oral evidence was presented both for the claimant and the Government (R., 15–42) the substance of which was to the effect that the claimant had only been in possession of about 30 acres of the tract claimed. Consideration of this phase of the case is not now necessary, because of the theory the United States advanced, to wit, that all the lands claimed had theretofore been confirmed by Congress to other parties and patents issued in pursuance thereof. In support of its contention the Government introduced in evidence various documents and plats (R., 45–61) which convinced the court below that the contention was well founded, and the decree of the court in the case contains the following paragraph (R., 70):

> 6. But the court further finds, as matter of fact, that the land comprised within the tract aforesaid is included within the outboundaries of the town of Cebolleta grant, reported num-

> ber 46, and the Paguate purchase tract, reported number 30; the said Cebolleta grant having been confirmed to the claimants thereof by an act of Congress approved March 3, A. D. 1869, and thereupon duly patented to said claimants by the proper authorities of the United States, and the said Paguate purchase tract having been confirmed to the Indians of the pueblo of Laguna by an act of Congress approved June 21, 1860, and thereupon patented to said pueblo by the proper authorities of the United States. (R., 70.)

Bearing in mind the prohibition of subsection 4 of section 13 of the creative act, and considering in connection therewith the paragraph of the decree just quoted, a perusal and appreciative consideration of the paragraph of the decree immediately following it certainly attracts one's inquisitive attention, to say the least, to wit:

> 7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons, and their successors in interest, but that notwithstanding such fact that *this court is without jurisdiction, because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them*, or to order a survey thereof for such purpose, and for such reason no other or different relief than the *pronouncing upon the character of the claimant's title* as aforesaid is or will be granted by this court, and it is so ordered. (R., 70.)

ARGUMENT.

The record in this case presents a strange anomaly in jurisprudence. In one breath the court declares that it is without jurisdiction over this claim, and in the next breath it says that it will pronounce upon the character of the title presented, and adjudges it to be a complete, perfect, and valid grant.

The error of the court in pronouncing upon the character of claimant's title is obvious, because jurisdiction over the land for any purpose is specifically denied that tribunal, if it should find that the right to the land has been lawfully acted upon by Congress: "No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority." (Subsection 4, section 13.) (*United States* v. *Conway*, 175 U. S., 60.)

Such explicit and stubborn mandate defies any attempt to pervert its plain direction by ingenious argument or relative construction with the other provisions of the act. It is one of the limiting provisions upon a special jurisdiction which the act conferred upon the court. The act provided that claims under title derived from the Spanish or Mexican Government, of two general classes, perfect and imperfect, might be examined into by the court, and then by various restrictions proceeds to narrow that jurisdiction by excepting certain of those claims, to wit: It provided that unless imperfect claims should be presented within two years, they should be barred; that no claim should

be allowed which would overthrow any just and unextinguished Indian title or rights; that no claim to lands which have been disposed of by the United States shall be allowed; that no allowance of any claim shall confer any mineral rights, and by other eliminating provisions a constriction of this jurisdiction was secured, among which is subsection 4 of section 13 relating to lands the right to which has been acted upon by Congress.

The confirmation of all lawfully and regularly derived claims which fell within the limits of the jurisdiction outlined in the act was the principal object and purpose of the act, and to that end Congress provided methods of procedure and laid down rules and principles for the court's determination of whether that confirmation could be given; and it further provided machinery for giving definitive effect to that confirmation. If the confirmation could not be granted because of former recognition of the rights of others to the same lands by the political branch of the Government, the court was required to dismiss the petition or reject the claim. A confirmation necessarily follows an affirmative finding on the merits of the case. An affirmative finding without the sequential confirmation necessarily amounts to nothing, is pure dictum, and in this case has done serious stricture to the fundamental principle that "the law never does a vain thing."

In every legal investigation the first inquiry is as to the jurisdiction. Jurisdiction is the *sine qua non* of every legal investigation; it is the technical license for every judicial inquiry into the merits. It is the first

anxiety of every tribunal in entertaining an action. When it is determined that jurisdiction does not exist, there the matter must end so far as the court is concerned, and, whatever its further powers and prerogatives may be, at the instant it finds that jurisdiction over the matter is not in it, at that very instant it becomes *functus officio*.

In the case at bar the court first passed upon the merits of the claim, and adjudged the title to be complete, perfect, and valid, but then found a want of jurisdiction a bar to the granting of the relief asked.

It should not have pronounced upon the character of title which it had no jurisdiction to determine. The United States relied upon want of jurisdiction or authority in the court, and did not go into or attempt to test the validity or character of the title, if any, held by the claimant. The court should have followed its defined duty upon discovery that it was without jurisdiction of the subject of the case, and adopted language similar to that of this court in the case of *United States* v. *Roselius* (15 How., 37):

> We, of course, express no opinion as to the sufficiency of the evidence to maintain the complete and perfect title claimed in the petition. That question is not before us on this appeal; for, as the district court had no authority to decide upon it, the decree must be reversed for want of jurisdiction, and the petition dismissed. But we shall dismiss it without prejudice to the legal rights of either party, leaving the petition

at liberty to assert his rights in any court having competent jurisdiction.

By the finding that the grant in 1768 vested "a valid and perfect title in fee simple" in the grantee (R., 69), and "that such title remained in said grantees and their successors from thence * * * to the present time" (R., 70), notwithstanding that it also found that all the lands within the limits of the grants had been confirmed by Congress to other parties in 1860 and 1869, the court has declared that the action by Congress is void and the patents of no effect by reason of the petitioner's superior title to the same land. While the question of the superiority of these titles was not tried and submitted to the Court of Private Land Claims, and the assumption that the title asserted to the land was perfect and of full vigor might have been overthrown upon grounds of abandonment and resumption of the land by regrant to others, the decree of the court is tantamount to a judicial criticism upon the action of Congress, the reservoir from which flows its own authority and which expressly prohibited the court exercising its functions over lands "the right to which has hitherto been lawfully acted upon by Congress or under its authority."

The finding made by the Court of Private Land Claims of the validity of the title only tends to add to the difficulties which will attend a contest between this title and that under which the two claims of Cebolleta and Laguna, confirmed by Congress, are held. The private rights of these conflicting claimants to the same

land are reserved to the local courts for their exploitation and determination.

The decrees of every tribunal should be treated as solemn and serious findings. A certain dignity inevitably attaches to the expressed opinions of courts, even if they be dicta. Great weight will be sought to be given to the finding of the Court of Private Land Claims that this title is complete, perfect, and valid, for it will be urged that the Court of Private Land Claims is a tribunal charged with this special line of investigation, and consequently better qualified, by reason of such and its vast experience and research therein, to pass correct judgment upon this title than a local tribunal of general jurisdiction and scope comprehending every phase of litigious inquiry. Hence, if this decree be allowed to stand, with its finding and adjudication of the validity of the title, its tremendous influence upon the consideration of the issues between the contesting claimants in the local courts is at once apparent—an influence which Congress by the plainest language prohibited the court from extending.

This decree was withheld by the Court of Private Land Claims awaiting the decision of this court in the case of *Conway* v. *United States* (175 U. S., 60), which involved similar issues (R., 69), although it would seem that the court did not follow the rulings of this court in that case.

That case involved overlapping grants, wherein the Court of Private Land Claims declined to except out of the decree of confirmation the lands patented to the

pueblos of Nambe and Pojoaque by Congress; and after finding the petitioner's claim to be complete, perfect, and valid, it said:

> If the petitioners in this case have a complete and perfect title to the land in question under the grant of 1731, it necessarily followed that the pueblos of Nambe and Pojoaque have no right or title to any of the land within the boundaries of such complete and perfect grant. But the decree of this court does not in any way affect the right and title, if any, that the pueblos acquired by their patents from the United States, as between them and the petitioners.

In its opinion this court said:

> Nothing can be plainer from the language of the private land claim act * * * that no claim shall be allowed for any land the right to which has been lawfully acted upon by Congress (sec. 13). (175 U. S., 67, 68.)
>
> Nor is this the proper time to adjudicate upon the respective merits of the two titles. * * * The duty of the court under section 8, "to hear, try, and determine the validity of the same" (the grant) "and the right of the claimants thereto, its extent, location, and boundaries," is discharged by determining the extent and validity of the grant as between the United States and the grantee, and it is not incumbent upon the Court of Private Land Claims to determine the priority of right as between him and another grantee. Such private rights are care-

> fully preserved in the eighth and thirteenth sections. (Ibid., 69.)
>
> When the title has once been confirmed by Congress it should be respected by the Court of Private Land Claims as if it were a confirmation by the court itself. (Ibid., 70.)

The decree of the Court of Private Land Claims does amount to a determination of the priority of the conflicting titles, for in paragraph 1 it finds that in 1768 "a valid and perfect title in fee simple" to the land was granted (R., 69), and in paragraph 2 it finds "that such title remained in said grantees and their successors from thence hitherto * * * to the present time" (R., 70), notwithstanding in paragraph 6 it finds that the same lands were confirmed by Congress in 1860 and 1869 to other parties. Certainly, in finding the petitioner to be vested with a "valid and perfect title in fee simple," the titles of the Cebolleta and Laguna confirmed by Congress have not been "respected by the Court of Private Land Claims as if it were a confirmation by the court itself."

Section 9 of the private land claims act, after providing for an appeal to this court, says:

> On any such appeal the Supreme Court shall retry the cause * * * and may amend the record of the proceedings below as truth and justice may require; and on such retrial and hearing every question shall be open, and the decision of the Supreme Court thereon shall be final and conclusive.

It is submitted that the court below should be by this court directed to amend its record and decree by striking out all that part of the latter as follows:

> 1. That in the year A. D. 1768 a valid and perfect title in fee simple to all of the land of the sitio de San Jose de Encinal, situated in what is now Valencia County, N. Mex., was by the proper officers of the Spanish Government, the then sovereign power of what is now the Territory of New Mexico, granted in equal shares unto Baltazar Baca and his two sons, and which said tract of land, situated in said county as aforesaid, was and is described as follows, that is to say: It is bounded on the east by a table-land; thence it extends westward 5,000 Castilian varas to a sharp-pointed black hill; on the north it is bounded by the Ceboll-leta Mountain; on the south it is bounded by some white bluffs, at whose base runs the Zuni Road—all as the same is known and designated upon the maps, plats, and surveys in file No. 104 in the office of the surveyor-general of the Territory of New Mexico.
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> 2. That such title so remained in said grantees and their successors from thence hitherto and up to and including the time of the cession of the land now comprised in the Territory of New Mexico to the United States, and has so continued from thence to the present time.
>
> 3. That the said grantees and their successors have from the time of the making of said grant complied with all conditions necessary to the validity of the same.

4. That such title in such grantees and their successors to said tract of land was and is complete, valid, and perfect, and so was at the date of the cession of the land now comprised in the Territory of New Mexico to the United States by the treaty of Guadalupe Hidalgo, and the same was and is such a title as the United States is bound to recognize and confirm by virtue of said treaty and otherwise.

5. That the claimant, Margarito Baca, is a lineal descendant of the said Baltazar Baca, one of the original grantees.

6. But the court further finds, as matter of fact—

* * * * *

7. Wherefore it is considered and adjudged by the court that a complete, valid, and perfect title in and to the tract of land above described was and is vested in the said Baltazar Baca and his two sons and their successors in interest, but that notwithstanding such fact, that this court is without jurisdiction because of the patents for the said land so as aforesaid issued by the United States, to decree and confirm the same unto them, or to order a survey thereof for such purpose, and for such reason no other or different relief than the pronouncing upon the character of the claimant's title as aforesaid is or will be granted by this court, and it is so ordered. (R., 69–70.)

And the Court of Private Land Claims should be further directed to dismiss the petition without prejudice to any rights the claimant may have under his

title, without extending to him the assistance of their opinion in the form of a decree, and adjudging the solemn validity of his grant and title.

Respectfully submitted.

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